UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JEROME E. FRANCINI 1717 10th St. Cuyahoga Falls, OH 44221 and, **ALICE G. FRANCINI** 1717 10th St. Cuyahoga Falls, OH 44221 Plaintiffs, -vs- **SUMMA HEALTH SYSTEM** c/o Robert A. Gerberry 525 E. Market St. Akron, OH 44304 Defendant.	))))))))))))))))))))	CASE NO. JUDGE **COMPLAINT** **JURY DEMAND ENCLOSED HEREON**

Now come Plaintiffs, Jerome and Alice Francini, by and through their undersigned, counsel, and for their Complaint allege and aver as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and §1343, as it is an action seeking redress under the laws and statutes of the United States of America for deprivations of rights secured by the Constitution and laws of the United States.

2. This Court has jurisdiction over the Plaintiffs' claims arising under the Constitution and laws of the State of Ohio pursuant to 28 U.S.C. §1367(a), as such claims are part of the same case or controversy as those giving rise to the claims over which this Court has jurisdiction under 28 U.S.C. §§1331 and 1343.

3. Venue properly lies in this Court under 28 U.S.C. §1391(b), as the Defendant resides within the Northern District of Ohio and all relevant events giving rise to the action occurred within the Northern District of Ohio.

PARTIES

4. Plaintiff, JEROME E. FRANCINI, is an individual over the age of 18 years who, at all times relevant hereto, resided in the City of Cuyahoga Falls, County of Summit, and State of Ohio.

5. Plaintiff, ALICE G. FRANCINI, is an individual over the age of 18 years who, at all times relevant hereto, resided in the City of Cuyahoga Falls, County of Summit, and State of Ohio.

6. Defendant, SUMMA HEALTH SYSTEM (hereinafter referred to as "Summa"), is a corporation licensed to transact business in the State of Ohio, and the events giving rise to this action arose out of its activities in the City of Akron, County of Summit, State of Ohio.

FACTUAL HISTORY

7. Plaintiffs reallege and incorporate by reference the allegations made in the foregoing paragraphs as if fully rewritten herein.

8. Plaintiff Jerome Francini was hired by Defendant Summa on or about December 7, 1987 and had worked for Defendant for over twenty-eight (28) years prior to his termination of April 28, 2016.

9. Plaintiff worked for Defendant at its facility located in the city of Akron, and he was fifty-seven (57) years old at the time Defendant terminated his employment.

10. Plaintiff worked for Defendant as an imaging specialist, and as an imaging specialist he frequently traveled to different hospitals and performed maintenance and training on Summa Health owned radiology equipment.
11. When Plaintiff worked on a piece of equipment he would note his travel in a mileage log and create a work order for the work performed, which was then sent to the Director of Radiology.
12. Plaintiff was reimbursed for his travel expenses at a rate of $0.54 per mile.
13. In March/early-April of 2016, Plaintiff completed approximately forty (40) trips to off-site Summa facilities in performance of his job responsibilities.
14. At all times relevant hereto, Defendant did not have a policy in place requiring engineering service work orders for mileage reimbursement, nor had Plaintiff been appraised of any policies regarding mileage reimbursement.
15. Plaintiff had filled out his mileage logs and work orders the same way throughout his employment with Defendant, and Defendant had never raised any issues with his documentation prior to the events giving rise to this action.
16. However, when a discrepancy arose regarding his mileage log in March/April 2016 Plaintiff was given no official warnings or discipline prior to his termination.
17. Following the above-outlined events, Defendant suspended Plaintiff’s employment on April 20, 2016, and Plaintiff was not permitted to gather information from his personal computer or any other pertinent information to support his position prior to a scheduled meeting with Defendant’s Human Resources Department.

18. Defendant conducted an investigation into the alleged discrepancy, which was inconclusive and based on incomplete information, however Defendant nonetheless chose to terminate Plaintiff's employment on April 28, 2016.

ADMINISTRATIVE PREREQUISITES

19. Plaintiff has complied with all the administrative prerequisites to this action under the Age Discrimination in Employment Act, §§ 29 U.S.C. § 621 et seq., as amended, as follows:

    a. On or about October 25, 2016, Plaintiff timely filed a formal charge of age discrimination and retaliation against Defendant with the Equal Employment Opportunity Commission ("EEOC").

    b. Plaintiff fully cooperated in the agency's investigation.

    c. Plaintiff's EEOC charge was transferred to the Ohio Civil Rights Commission (OCRC) on October 31, 2016 for workload redistribution purposes. The investigation is still ongoing, however sixty (60) days have passed since the filing of Plaintiff's EEOC charge.

FIRST CLAIM
AGE DISCRIMINATION IN EMPLOYMENT ACT (29 U.S.C. § 623)

20. Plaintiffs reallege and incorporate by reference the allegations contained in the foregoing paragraphs as if fully rewritten herein.

21. This claim is authorized and instituted pursuant to the provisions of the Age Discrimination in Employment Act 29 U.S.C. § 621 et seq., as amended, for relief based upon the unlawful employment practices of Defendant SUMMA.

22. Plaintiff Jerome Francini was fifty-seven (57) years old at the time of his disparate treatment and termination.

23. At all times relevant to this action, Plaintiff fully, adequately and completely performed all of the essential functions, duties and responsibilities of his employment with Defendant.

24. Upon information and belief, Defendant discriminated against Plaintiff based solely on his age by, among other ways: unilaterally enforcing new policies without informing Plaintiff; denying Plaintiff the opportunity to gather pertinent information in support of his position prior to a meeting with Defendant's HR Department; and terminating Plaintiff's employment following an inconclusive and incomplete investigation.

25. As a result of Defendant's policies and practices, Plaintiff was unjustly and discriminatorily deprived of equal employment opportunities because of his age.

26. As a further result of Defendant's above stated actions, Plaintiff has been, is being and will be deprived of income in the form of wages and prospective retirement benefits, and other benefits, promotion opportunities and job assignments due to him as an employee, but denied because of his age, in an amount to be proven at trial.

SECOND CLAIM
RETALIATION (29 U.S.C 623)

27. Plaintiffs reallege and incorporate by reference the allegations contained in the above-mentioned paragraphs as if fully rewritten herein.

28. The act opposing an employer's discriminatory practices is protected activity as defined by 29 U.S.C 623(d).

29. Both prior to and following his suspension and subsequent termination in April 2016, Plaintiff complained about Defendant's discriminatory practices.

30. When Defendant did nothing to remedy the discrimination, Plaintiff eventually filed an EEOC charge on October 25, 2016.

31. Defendant retaliated against Plaintiff by unilaterally enforcing new policies without informing Plaintiff, denying Plaintiff the opportunity to gather pertinent information in support of his position prior to a meeting with Defendant's HR Department, and terminating his employment following an inconclusive and incomplete investigation.

32. Defendant's conduct evidences a conscious disregard for Plaintiff's right and obligation to complain of discrimination, such disregard having a great possibility of causing substantial damages and a chilling effect on the right to complain of discrimination in the workplace, and thereby subjecting Defendant to liability for punitive damages.

33. As a result of Defendant's retaliatory actions, Plaintiff has been, is being, and will be deprived of income in the form of wages and prospective retirement benefits, and other benefits, promotion opportunities and job assignments due to him as an employee, in an amount to be proven at trial

34. As further direct and proximate result of Defendant's actions, Plaintiff also suffered, and continues to suffer from, increased stress, anxiety, loss of confidence, and mental distress.

THIRD CLAIM
UNLAWFUL DISCRIMINATORY PRACTICES
R.C. §§ 4112.14 and 4112.99

35. Plaintiffs reallege and incorporate by reference the allegations contained in the above-mentioned paragraphs as if fully rewritten herein.

36. As a result of the Defendant's conduct described above, Plaintiff Jerome Francini has been discriminated and retaliated against on the basis of his age in violation of R.C. § 4112 et seq., as amended, and its implementing regulations.

37. As a result of Defendant's actions, Plaintiff has been, is being, and will be deprived of income in the form of wages and prospective retirement benefits, and other benefits, promotion opportunities and job assignments due to him as an employee, in an amount to be proven at trial.

38. As further direct and proximate result of Defendant's actions, Plaintiff also suffered, and continues to suffer from, increased stress, anxiety, loss of confidence, and mental distress.

FOURTH CLAIM
DEFAMATION

39. Plaintiffs reallege and incorporate by reference the allegations in the foregoing paragraphs as if fully rewritten herein.

40. On April 20, 2016, Defendant suspended Plaintiff Jerome Francini for allegedly falsifying mileage reports, when Plaintiff was in fact completing work in relation to his employment and for Defendant's benefit.

41. Defendant ignored Plaintiff's repeated and emphatic denials as to the truth of the allegations at issue, and eventually terminated Plaintiff on April 28, 2016.

42. Defendant based Plaintiff's termination on an inconclusive and incomplete investigation into the alleged discrepancies.

43. Defendant's inadequate and reckless investigation leading to Plaintiff's termination was the result a deliberately one-sided and selective investigation into the events at hand.

44. The false allegations and statements that Plaintiff was falsifying mileage logs and/or defrauding Defendant Summa directly and negatively impact any future employer's view of Plaintiff's fitness for employment and also damaged Plaintiff's reputation in the community.

45. As a result of that reckless and insufficient investigation and subsequent termination of Plaintiff, defamatory materials and statements regarding Plaintiff's termination became public knowledge. The defamatory materials will also become knowledge to any future employer through whom Plaintiff seeks to achieve employment.

46. Defendant's reckless and insufficient investigation and termination of Plaintiff defamed the character of Plaintiff, and caused injury to plaintiff in the form of embarrassment, mental anguish, loss of reputation among his peers, loss of self-esteem, harm to Plaintiff's relationship with his family, and loss of Plaintiff's reputation in the community.

FIFTH CLAIM
LOSS OF SPOUSAL CONSORTIUM
FOR PLAINTIFF, ALICE FRANCINI

47. Plaintiffs reallege and incorporate by reference the allegations made in the foregoing paragraphs as if fully rewritten herein.

48. All times relevant hereto, Plaintiff, Alice Francini was and is the lawful wife of Plaintiff, Jerome Francini.

49. As a direct and proximate result of the discriminatory, retaliatory, and defamatory actions of the Defendant, Plaintiff, Alice Francini lost the services, society, and consortium of her husband, Jerome Francini in the past and with reasonable certainty, will continue to lose the same in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Jerome and Alice Francini request judgment and damages against Defendant as follows:

a. A declaratory judgment that Defendant Summa has violated Plaintiff's right to be free from age and disability discrimination in the workplace pursuant to the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., as amended.
b. An award to Plaintiffs for compensatory damages in amount to be shown at trial for past and future economic and non-economic losses, including emotional distress and mental anguish, impairment of the quality of life; and consequential losses;
c. An award for reasonable attorneys' fees and costs, including but not limited to expert witness fees, as provided in the, ADEA, and as provided under state law;
d. An award of punitive damages for the malicious and discriminatory actions of Defendant;
e. An award to Plaintiffs of interest on any awards at the highest rate allowed by law; and
f. Such other and further relief as this Court deems just and appropriate.

Respectfully Submitted,

/s/ Robert A. Pecchio
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JURY DEMAND

Pursuant to Fed.R.Civ.P. 38, Plaintiff hereby demands trial by jury for all claims herein plead.

Respectfully Submitted,

/s/ Robert A. Pecchio
Robert A. Pecchio, Esq. (0025282)
Andrew J. Wides, Esq. (0091633)

Attorneys for Plaintiffs